

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA

180 HOWARD STREET SAN FRANCISCO, CALIFORNIA 94105-1639
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CRIMINAL LAW Examination Registration & Preparation Packet

1. Examination fact sheet
2. Fillable registration form that can be mailed or faxed
3. Exam Specifications listing topics that may be tested on the exam
4. Sample essay questions from past examinations

Date	Tuesday, October 25, 2011, 8:00 a.m. – 5:30 p.m.
Registration Deadline	Must be received by 9/26/11; late registration if space allows
Examination sites (2)	Oakland Convention Center at Marriott City Center -or- Pasadena Convention Center (see website for information about special hotel rates at either site)
Registration Fee	\$350 for all applicants
Laptop Fee	\$125 Additional fee to use laptop PC to type answers.
Late Fee	\$150 late fee applies to applications received after 9/26/11. Additional “walk-in” fee applies after 10/17/11.
Exam format	75 multiple-choice questions and eight 30 minute essay questions. Criminal Law examinees may choose to take either the state or federal version of the exam.
Scoring	A passing score is 70%. Exams with scores between 65-70% are re-read by a Committee of Reappraisers, whose decision is final, pursuant to section 8.3 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists. Results are mailed only after all reappraisals have been completed.
Reference	No reference materials are allowed during the exam
Testing Accommodations	To apply for testing accommodations at either location, please contact the Legal Specialization Department at (415) 538-2120 or 711 for relay services or access the required forms online at: www.californiaspecialist.org



Registration for Legal Specialist Certification Examination

Exam Date: October 25, 2011, 8:00 a.m.

Registration Deadline: Must be received by September 26, 2011. After that date, registrations will be processed on a "space available" basis only and an additional late fee will apply.

Examination Registrant's Name: _____

California State Bar Membership Number: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Examination for which you are registering (Please check one box):

- | | |
|---|---|
| <input type="checkbox"/> Admiralty and Maritime | <input type="checkbox"/> Family |
| <input type="checkbox"/> Appellate – Civil | <input type="checkbox"/> Franchise and Distribution |
| <input type="checkbox"/> Appellate – Criminal | <input type="checkbox"/> Immigration |
| <input type="checkbox"/> Bankruptcy | <input type="checkbox"/> Legal Malpractice |
| <input type="checkbox"/> Criminal – State | <input type="checkbox"/> Taxation |
| <input type="checkbox"/> Criminal – Federal | <input type="checkbox"/> Workers' Compensation |
| <input type="checkbox"/> Estate Planning, Trust and Probate | |

How did you learn about the legal specialization program? (check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> A colleague | <input type="checkbox"/> California Bar Journal |
| <input type="checkbox"/> State Bar Website | <input type="checkbox"/> Information booth at conference: |
| <input type="checkbox"/> Mailing or e-mail to State Bar of California section members | <input type="checkbox"/> Other: _____ |

I wish to take the examination in (check one):

- ☐ Southern California (Pasadena Convention Center)
☐ Northern California (Oakland Convention Center at Marriott City Center)

I wish to take the examination using the following method (check one):

- ☐ Writing
☐ Typing on my laptop PC. I understand that I must download ExamSoft software and register the software on my computer prior to arriving at the test center, and that I will need to agree to the terms of use for using this program to take the Legal Specialization Examination.

I wish to pay by (check one):

- ☐ Enclosed Check made payable to The State Bar of California
☐ Enclosed Money Order made payable to The State Bar of California
☐ MasterCard or Visa (complete and sign the credit card authorization form on last page)

The undersigned states:

- I am an active member of the State Bar of California.
- I am registering to take the written examination to be given on Tuesday, October 25, 2011, from approximately 8 a.m. to 5:30 p.m., with a lunch break on my own.
- I understand that, if I am successful on the examination, I will be required to file an application for certification with the appropriate fee, demonstrating compliance with all other requirements of the legal specialization program, including education, tasks and experience, and recommendations, on or before April 25, 2013 before my application can be considered by the Board of Legal Specialization.
- I am aware that the requirements for becoming a certified specialist are set forth in the Rules and Standards available at www.californiaspecialist.org and that the Board of Legal Specialization recommends that I review these rules prior to applying to be sure that I can meet the requirements within 18 months after taking the examination.
- I understand that the program is self funded, and, if certified, I will be required to pay an additional annual fee and to recertify every five years, though I will not need to take the examination again.
- I fully understand that failure to make a truthful disclosure of any fact or item of information required may result in denial of my registration, revocation of my certificate of specialization, if granted, or disciplinary action by The State Bar of California.

I have carefully read the foregoing registration and declare, under penalty of perjury under the laws of the State of California, that the information I have provided is true and correct.

Executed on _____ at _____, California.
(Date) (City and/or County)

Signature: _____

Before mailing, please check to see if you have:

- 1) Filled in all questions
- 2) Signed the form
- 3) Enclosed payment or filled in the attached credit card authorization form

Mail application with payment to:
Department of Legal Specialization
The State Bar of California
180 Howard Street
San Francisco, CA 94105
-or-

Fax application with credit card payment to 415-538-2180

You will receive an email confirmation and receipt when your application has been processed.

THANK YOU!

**The State Bar of California
Board of Legal Specialization Examination
Credit Card Authorization Form**

Examination Registrant's Information

(Please enter all information below even if you have already entered on page 1. Thank you for your cooperation.)

Bar Number: _____

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Credit Card Information

☐ Visa

☐ MasterCard

Only Visa and MasterCard credit cards are accepted.

Credit Card Number: _____

Expiration Date (Month/Year): _____

Name on Card: _____

Billing Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

By my signature on this document, I/we hereby authorize The State Bar of California to charge my/our Visa or MasterCard account for the amount that I have entered in the "total" box below.

Fees (Be sure to write in the total)

Examination registration (Applies to All Registrants)	\$350	\$
Laptop fee (Applies to Registrants who wish to type the exam on their computer rather than write the answers)	\$125	\$
Late Fee (Registration Received between 9/26/2011-10/17/2011)	\$150	\$
Late Fee (if registering after October 17, 2011)	\$250	\$
TOTAL (Add all lines above that apply to you)		\$

Specifications for State Bar of California Criminal Law Certification Examination

Purpose of the Examination: The Criminal Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and core substantive criminal law that should be common to specialists in the field as represented by the subject areas listed below. We recognize that these subject areas may overlap, which may require that you incorporate in your answers to exam questions more than one substantive or procedural area of criminal law. Also, the order of the subject areas does not reflect their relative importance, nor does the sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply the law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

These subject areas apply to state practitioners and the corresponding federal practitioners. Those attorneys who limit their practice to federal or state law will only be required to answer questions related to their respective area.

Knowledge of the following subject areas may be assessed:

Subject Area 1: Professional Responsibility

- 1.1 Duties to clients, opposing counsel and the Court
- 1.2 Conflicts of interest
- 1.3 Dual representation

Subject Area 2: Crimes & Defenses

- 2.1 DUIs
- 2.2 Murder/Special Circumstances
- 2.3 Sex crimes and related consequences
- 2.4 Tactics/strategies
- 2.5 Mental health issues and related consequences
- 2.6 Not guilty by reason of insanity
- 2.7 Not guilty by reason of insanity hearings on restoration of sanity and extensions of commitment
- 2.8 Conspiracy
- 2.9 Crimes against property
- 2.10 Crimes against persons
- 2.11 Narcotics
- 2.12 Gang Crimes and enhancements
- 2.13 Vicarious liability, aiding and abetting
- 2.14 "Victimless" crimes
- 2.15 Other crimes otherwise not specified in this subject area

Subject Area 3: Trial Court Practice and Procedure

- 3.1 Arrest and bench warrants, summons/subpoenas
- 3.2 Arraignment
- 3.3 Deferred entry of judgment and diversion
- 3.4 Plea bargaining
- 3.5 Pleadings, joinder and severance
- 3.6 Grand Jury proceedings
- 3.7 Discovery

- 3.8 Preliminary hearings
- 3.9 Pre-trial and trial publicity
- 3.10 Right to speedy trial
- 3.11 Line-ups and identification
- 3.12 Search and seizure
- 3.13 Informants
- 3.14 Pre-trial motion practice
- 3.15 Confessions and admissions
- 3.16 Trial motions
- 3.17 Evidence
- 3.18 Expert witnesses
- 3.19 Jury selection
- 3.20 Jury instructions
- 3.21 Misdemeanor sentencing
- 3.22 Preserving appellate issues
- 3.23 Felony sentencing
 - 3.23.1 California Rules of Court
 - 3.23.2 Prior convictions
 - 3.23.3 Enhancements
 - 3.23.4 Probation
 - 3.23.5 Proposition 36
 - 3.23.6 Three Strikes
 - 3.23.7 Expungements and similar relief
 - 3.23.8 Immigration consequences
 - 3.23.9 Duties after judgment
 - 3.23.10 Writs
- 3.24 Present and future collateral consequences and disabilities
- 3.25 Sexually Violent Predator proceedings
- 3.26 Mentally Disordered Offender proceedings
- 3.27 Credit for time served and related provisions
- 3.28 Bail and other forms of release from custody pending finality of judgment
- 3.29 Present competency proceedings

Subject Area 4: Appeals

- 4.1 Preserving appellate issues and perfecting the right to appeal
- 4.2 Misdemeanor appeals
- 4.3 Felony appeals
- 4.4 Federal and State Habeas Corpus

Subject Area 5: State Juvenile

- 5.1 W&I 707/Prop. 21
- 5.2 W&I 602
- 5.3 Disposition
- 5.4 Detention hearings
- 5.5 Age/competency
- 5.6 Records

Subject Area 6: Federal Sentencing

- 6.1 Guidelines
- 6.2 Mandatory minimum/maximum
- 6.3 Violations of probation and supervised release
- 6.4 Bureau of Prisons issues

**STATE BAR OF CALIFORNIA
CRIMINAL LAW CERTIFICATION EXAM**

SAMPLE QUESTION

These questions are actual questions from past exams. These questions were designed to be read and answered within 45 minutes, though current examination questions are designed to be read and answered in 30 minutes. No 30 minute essay questions will be released publicly.

Sample Question #1 – State Law

You were appointed to represent the defendant who was charged with multiple non-capital felonies. You completed your investigation and discovery. At the calendar department's status conference, the district attorney offered you a deal which would have resulted in the defendant doing one tenth of his maximum exposure time in state prison. The calendar judge was willing to go along with the offer.

You communicated this offer to the defendant. He asked you your opinion on the deal. You advised him that this was a very good deal and you strongly advised him to take the district attorney's offer. The defendant rejected the offer. You were assigned to a trial judge. In the trial court the defendant wanted to fire you. The judge cleared the courtroom and conducted a hearing. The defendant claimed that you were incompetent, unprepared, and that you were selling him out. The defendant further wanted to represent himself. The judge heard the defendant's claims, took evidence and then denied everything the defendant requested. The judge ordered that the total record of the proceedings be sealed and marked confidential.

The defendant then asked if he could take the original deal on a no contest plea. The district attorney agreed and the judge was willing to accept the plea for the sentence indicated. In due course, judgment was pronounced and the defendant was sentenced to state prison. Within 10 days, the defendant wrote to the court from state prison saying he wanted to appeal his conviction. The trial judge re-appointed you only to advise the defendant how to proceed.

- A. What are your obligations under this appointment to the court and to your client? Discuss.**
- B. What must your client do to perfect his appeal? Discuss.**
- C. What should be included in the record?**

Sample Question #2 – State Law

Police were called by a firefighter who had detained defendant near a suspicious fire at an elementary school. The defendant had been detained originally by a passerby who turned him over to the fireman. When the police arrived, they took custody of the defendant. The passerby had left before the police arrived. When the police arrived, the fire was out. The police got permission from defendant to search him. A lighter was recovered from his pocket. The police Mirandized him, he agreed to talk, and he gave incriminating answers to the police questions. At trial, the defendant objected to the admission of the lighter and the statements.

- A. What arguments could the defendant make in a motion to suppress the statements and the lighter? Discuss.**

Sample Question #3 – State Law

Defendant, a 22-year-old male, engaged in several acts of sexual intercourse and oral copulation with a 15 year old female during a month-long period while he was a guest in her parent's home. He claims all acts were consensual. She never claimed any force or fear were involved. She did state however that she had been drinking by herself before, and was very sleepy during, the first two times she had sex with the defendant.

- A. What are the potential criminal charges that the defendant faces? Discuss.**

- B. What would be the potential defenses to those charges, and the justification for those charges? Discuss.**
- C. What, if convicted, are the potential penalties that the defendant could receive? Discuss.**

Sample Question #4 – State Law

Sally Smith and her husband Joe Smith are charged with Penal Code §273(d), corporal injury to their child. The child was removed from their custody by social services. When visiting the child at the foster home the couple videotaped their visit. Interactions with the child and the couple's conversations were recorded on the videotape. Sally gave the videotape to her attorney. The attorney decided it was incriminating and elected not to use the tape in trial. The prosecution heard that the tape was made and issued a subpoena *duces tecum* for the tape to be produced in court.

- A. What motion can the defense make to prevent the prosecution from getting the tape? Discuss.**
- B. What are the best arguments in support of the motion? Discuss.**
- C. What arguments should the prosecution make in support of obtaining the tape? Discuss.**

Sample Question #5 – State Law

The defendant entered the pro shop of a country club, and concealed two \$500 golf clubs under his raincoat and attempted to walk out the front door without paying for the clubs. The golf pro working at the cash register saw the tops of the golf clubs protruding from the back of the defendant's coat and yelled at the defendant to stop. The defendant was tackled and held down by a group of golfers waiting to tee off on the first hole.

The defendant is a 30-year-old homeless college graduate, who majored in mathematics. The defendant's IQ tests at genius level, however he has been diagnosed with a developmental disability called "Asperger's Syndrome." He excels at mathematics but he is not able to maintain a relationship with anyone, and has the social graces of a teenager.

The defendant is charged in a two-count felony complaint with a violation of Penal Code §459 and Penal Code §487(a). The complaint alleges that the defendant was previously convicted in 1992 of armed robbery, and had a previous conviction in 1990 for Penal Code §459. At the preliminary hearing, the prosecutor introduces the Abstract of Judgment and State Prison Commitment documentation on the two priors, which indicate that the defendant was convicted in 1992 of robbery pursuant to Penal Code §211, with an additional allegation that the defendant was armed with a weapon pursuant to Penal Code §12022(a)(1), and in the second conviction in 1990, the defendant was convicted of Penal Code §459. The defendant has told you that the 1992 robbery conviction involved an unloaded and inoperable handgun, and that the 1990 burglary case involved the burglary of a hardware store at night.

The prosecuting attorney requests that bail be set in the amount of One Million Dollars (\$1,000,000) since, "This is a three-strikes case." The prosecutor's offer to settle the case involves "Plead to the sheet, the offer is twenty-five (25) years to life."

- A. Discuss the potential sentences that the defendant could receive.**
- B. Discuss defendant's possible punishment.**
- C. Discuss what motions, if any, should be filed on behalf of the defendant, including the factual arguments to be made in support of any motions.**

Sample Question #6 – State Law

Defendant opened a new office in a "bad" part of town. Because he worked in the office at night, he purchased and registered a small .22 caliber pistol which he kept in the office.

After a while, he found he had no use for the gun and put it in an empty gym bag in the office closet.

Two years later, defendant had to take a short notice flight to Chicago. Hurriedly, he grabbed the “empty” gym bag and stuffed his brochures into it.

At the airport, the gun was discovered by the x-ray screeners. All witnesses in the police report stated that the defendant seemed genuinely surprised that his “lost” gun was in the bag.

Defendant had no criminal record and was charged with Penal Code §12025.

A. What are the defenses to the charge? Discuss.

Sample Question #7 – State Law

just after he turned 18, Andre was convicted of two counts of a violation of PC § 245(a)(2), Assault with a Firearm. He and two friends had gone to see one friend’s girlfriend. Her father and an uncle appeared and walked toward Andre and his friends, yelling at them. Andre pulled out a .22 pistol and fired at the father and uncle, missing them both. Andre and his friends then fled. Two days later Andre was arrested and the firearm was found in his room. Andre was committed to the California State Prison and released at age 21.

He is now 25 years old and has been off parole for 1 year. After a traffic stop for a broken taillight, during which the officer suspected that he was under the influence of a stimulant, Andre was found in possession of 1 gram of methamphetamine. He agreed to accompany police to his home, where they conducted a consent search, discovering no other evidence. Andre was charged with HS § 11377, a felony, and with the two prior PC § 245(a)(2) convictions as prior strikes. The traffic stop and search were lawful, so that Andre will suffer the conviction as charged either by plea or trial.

You are Andre’s attorney, and have learned that soon after he was released from prison he obtained employment as a machinist’s apprentice. He is about to complete his training and has remained with the same employer since his release (4½ years). Approximately two years ago, he began using methamphetamine on a recreational basis. His use escalated and he now uses it almost daily. He has been able to support his habit through his earnings and there is no evidence of drug dealing or other criminal activity. He is single, lives at home with his parents, and contributes to the support of the household.

A. What should your strategy be at sentencing? Discuss.

B. What are the sentencing options available to the Court? Discuss.

C. What standards must the Court adhere to in arriving at a sentence? Discuss.

Sample Question #8 – State Law

Your client is African-American and is charged with a felony burglary. The African-American population in the community is 8% according to the most recent census. During jury selection, two of the 12 prospective jurors called to the jury box are African-American. There are two more African-American jurors in the panel sitting behind you in the courtroom. During *voir dire*, juror number 3, an African-American, says that her brother has been convicted of the misdemeanor offense of DUI, and that he was treated fairly by the system. Juror number 3 is a teacher’s aide in a local middle school, and has never served on a jury before, and says that she can be fair. Juror number 6, a 22 year old African-American male, wants to enlist in the Marine Corps, and has completed two years of junior college. His answers are direct and short to all *voir dire* questions put to him. He says that he can be fair. The prosecutor uses two of his first five peremptory challenges to excuse juror number 3 and juror number 6.

A. What motion, if any, should you make at this point in the jury selection process?

B. What procedure, if any, must the Court follow in considering the motion?

C. What legal standard must the Court use in deciding the motion?

D. What relief, if any, should you request from the Court?

Assume that the Court has denied your motion and jury selection continues. The prosecutor uses the next two of his preemptory challenges in a race-neutral manner. One of the two remaining African-American jurors in the panel is called to the jury box. She is questioned by the prosecutor, and by you, and the prosecutor tells the Court that he accepts the jury. You exercise a preemptory challenge and jury selection continues. The last African-American juror is called to the jury box. The juror is male, and works for the Department of Social Services. The juror is 39 years old, and he served on a jury in a criminal case four years ago and that jury reached a verdict. The juror says that he can be fair in the case, but that "sometimes the system can be unfair to minorities." The prosecutor uses preemptory challenge number eight to excuse this juror.

E. What motion, if any, should you make at this point in the jury selection process?

F. What procedure must the Court follow, if any, in considering the motion?

G. What legal standard must the Court use in deciding the motion?

H. What relief, if any should you request from the Court?

Sample Question #9 – State Law

Victor lives alone but one morning he returned home from the store to find Daryl, a co-worker whom Victor would regularly give rides to their place of employment, standing in his living room. He ordered Daryl to leave, which Daryl did. Victor then searched his home, and discovered some jewelry missing from his bedroom dresser drawer. Victor called the Sheriff's Department.

A deputy arrived to investigate, and after interviewing Victor and examining the scene he proceeded to Daryl's place of residence. Daryl answered the deputy's knock on the door, but when the deputy requested to come inside to conduct an interview, Daryl refused and told the deputy to leave. The deputy told Daryl, "I am going to interview you. We can do this the easy way or the hard way," so Daryl acquiesced and let the deputy inside. The two then took seats in Daryl's living room and begin to talk, at which time the deputy saw some of the missing jewelry on Daryl's coffee table.

During questioning, Daryl admitted that he was inside his friend Victor's home and that he took some jewelry. He stated that he arrived to ask Victor for a ride to work and found the front door standing wide open. Fearing for Victor's safety, he entered thinking that a burglary might be in progress or that Victor might be ill. Once inside, finding nobody there, he decided to help himself to some of Victor's jewelry, so he entered the bedroom and took what he wanted and was in the process of leaving the home when Victor arrived and discovered him. Daryl states that he had a handgun on his person during the incident, though it was kept under his shirt and was never displayed to Victor. Victor never told the deputy that he saw a firearm. At the conclusion of this interview, the deputy arrested Daryl for Residential Burglary.

After his arrest, Daryl invoked his Miranda rights and refused to answer any questions. The District Attorney charged Daryl with one count of Residential Burglary (PC § 459/460(a)) and the special allegation of being armed with a firearm during the commission of a felony (PC § 12022(a)(1)). At the Preliminary Examination, Daryl was held to answer as charged.

A. What pretrial motions should the defense attorney make, and how would the prosecution likely respond? Discuss.

B. What trial motions should the defense attorney make, and how would the prosecution likely respond? Discuss.

C. What defense(s) are likely to be argued by Daryl's attorney during the trial, and how would the prosecution counter the argument(s)? Discuss.

D. If convicted as charged, what sentence would Daryl receive? Discuss.

Sample Question #10 – State Law

Mr. and Mrs. Greene brought their four-month-old daughter, Clara, to the emergency room on December 25. They told the ER doctor that they had noticed that their daughter's leg was swollen. After examination, Clara was diagnosed with a fractured femur. Because the ER records reflected a previous admission of Clara for a

broken bone in her arm the month before, doctors ordered further medical tests to rule out the child from abuse.

Full skeletal x-rays revealed multiple healed fractures. A police investigation was initiated. The Greenes hired an attorney, Mr. Russell, who said he would represent both parents during the police and Child Protective Services investigations. Both parents were adamant that they had no idea how their daughter had gotten the broken bones. There was no evidence that pointed to either of them. Each parent supported the other's innocence.

Mr. Russell, convinced of his clients' innocence, agreed with the investigative detective to have his clients interviewed by her. Each parent was separately interviewed. Each parent was accompanied by Mr. Russell. Each parent made a similar statement denying any acts which could have resulted in any fractures.

After the investigation was completed, a complaint was filed charging both parents with a violation of PC § 273a, child abuse. The father at this point tells Mr. Russell that he was out of town on business during the period of time in which the doctors say Clara was injured.

Mr. Russell says he will still represent both parents as long as each understands the potential conflict of interest. Mr. Russell asks each to sign a conflict waiver. Mr. Russell does not tell the mother about the information from the father regarding his out of town trip during the time Clara was injured. Each client signs a statement indicating that he/she understand the right to conflict free representation.

A. In what areas might conflict arise? Discuss.

B. Is the waiver adequate to resolve the conflict issues, if any? Discuss.

Sample Question #11 – State Law

Donnie is addicted to drugs; specifically, he has used cocaine recreationally on most weekends since he was 16 years old, has smoked marijuana daily since he was 14 years old, and has “dropped acid” on special occasions for many years. He is now, in the year 2005, 45 years old, and has four prior felony convictions: a 1978 conviction for HS § 11377(a) for which he was granted 36 months probation; a 1984 conviction for HS § 11350(a) for which he received a prison term of 16 months; a 1999 conviction for HS § 11377(a) for which he received a prison term of 2 years; and a 2003 conviction for PC § 666 for which he received a prison term of 3 years. Additionally, Donnie has suffered numerous misdemeanor convictions during the years 1978 through 2003, including several counts of HS §§ 11377(a), 11550(a) and several theft-related misdemeanor convictions. Within the past month, Donnie was paroled from State Prison. A condition of Donnie's parole is that he is subject to a search of his place of residence or property under his control, the standard parole search term in California.

One afternoon, Officer Peterson, a rookie police officer, was on his first ever solo patrol in a rural area of his jurisdiction. Peterson had never met Donnie, and was unaware of the fact that Donnie is a drug addict or that he is on parole. While driving down the street on which Donnie resides, Peterson noticed Donnie and several friends sitting on the front porch of a single-family residence. As he drove by, Peterson noticed that the subjects all watched him closely as he passed, and then all stood up and entered the residence. Suspicious of this behavior, Peterson decided to contact these individuals.

He parked and exited his patrol vehicle, approached the residence, and knocked on the front door. Donnie opened the door and made contact with Peterson, who observed several tattoos on Donnie's arms, from wrist to shoulder, as well as several tattoos on Donnie's neck and upper back. Peterson believed those tattoos to be consistent with prison tattoos. Donnie was also wearing a belt holster in which there was what appeared to be a semi-automatic pistol. Peterson also observed several of what he believed to be objective symptoms of drug intoxication on Donnie, including red eyes, constricted pupils, twitching, body tremors, and a white pasty coating on Donnie's tongue. Based on those observations, Peterson entered the residence to conduct a search. On Donnie's coffee table, around which his friends were sitting, Peterson observed several “lines” of a white powdery substance, later determined to be methamphetamine, as well as four very skinny “joints” of marijuana. Peterson arrested Donnie and seized all the suspected contraband found on the coffee table as well as the handgun Donnie was wearing.

A rather aggressive Deputy District Attorney charges Donnie with all of the following crimes:

- Possession of a Controlled Substance (HS §11377(a))
- Possession of a Controlled Substance for Sale (HS § 11378)
- Sales/Furnishing of a Controlled Substance (HS § 11379(a))
- Under the Influence of a Controlled Substance While Armed With a Firearm (HS § 11550(e))
- Possession of a Controlled Substance While Armed With a Firearm (HS § 11370.1)
- Possession of Less Than One Ounce of Marijuana (HS § 11357(b))
- Sales/Furnishing of Marijuana (HS § 11360), and
- Felon in Possession of a Firearm (PC § 12021(a)).

Additionally, Donnie is charged with the Special Allegations that he has suffered prior prison terms (PC § 667.5(b)), that he was armed with a firearm during the commission of a drug trafficking charge (PC § 12022(c)), and that he was armed with a firearm during the commission of a felony (PC § 12022(a)(1)).

- Discuss the theories under which these crimes and allegations can be supported or opposed.**
- What pretrial motions should Donnie's attorney file on his behalf, and what response should be expected from the prosecutor?**
- What sentencing options are available to the court if Donnie is convicted as charged?**

Sample Question #12 – State Law

Del, a 5'7", 150 lb. 55-year-old homeless man, lived on the streets for many years. He had a long-term substance abuse problem with alcohol, primarily beer. He had been attacked on numerous occasions and hospitalized twice, once for a stabbing and once for a shooting. He carried a knife for self-protection. On a chilly mid-morning in February, Del and some friends were in a small (25 spaces) open public parking lot trying to warm-up in an area of sunlight. Del, who had already had two beers that morning, was leaning against the side of a parked car. Suddenly, Vance appeared, walking through the parking lot yelling at the men to get away from his car. Vance, a 6'0", 190 lb. 70-year-old, lived several blocks away and regularly parked in the lot.

Vance grabbed Del and threw him aside, claiming Del scratched his car. Del insisted that he was wearing sneakers and could not have scratched the car. Vance repeatedly cursed at Del and threatened to kill him. He went to the trunk of his car to extract a baseball bat. Del jumped up and quickly slammed the trunk lid closed before Vance could grab the bat. A fight ensued. Del gained the upper hand and landed many blows. Del's knife slipped from his pocket during the struggle and fell to the ground. Vance grabbed for it, but Del stepped on Vance's hand. Del picked up his knife and stabbed Vance a single time in the lower right abdomen.

After stabbing him, Del searched Vance's pockets. When questioned about it later, Del stated that he was convinced Vance was reaching for a weapon during the fight. Del only found a checkbook, which he looked through and then tossed in some bushes.

Vance was taken to the hospital and underwent surgery to control bleeding. He died three days later, suffering a heart attack. The autopsy revealed extensive arteriosclerosis.

Del was charged with PC § 187 with weapons enhancement, and PC § 212.5. At trial, the District Attorney moved for jury instructions on the felony-murder rule.

What are the various degrees of homicide that could be applicable to this case, and what is the most likely outcome at trial? Discuss the issue of causation, the applicability, if any, of the felony-murder rule, and address the charge of PC § 212.5.

Sample Question #1 – Federal Law

Learn With Us, Inc. (LWU) is a private, post-secondary school which provides vocational training in a wide variety of blue collar fields. LWU has enrolled students under the PELL Grant program administered by the U.S. Department of Education (DOE), by which financially eligible students may receive tuition grants from the federal government. The PELL grants are paid directly by DOE to LWU through an electronic system by which LWU is authorized to draw down money directly from the DOE account into the LWU account through

an electronic transfer system. If the student fails to show up for class, or shows up but drops out during the semester, the student is deemed a “no-show” and LWU is obligated to refund the PELL funds back to DOE by electronically transferring the tuition funds back into the DOE account. It is the obligation of LWU to keep track of no-show students and make refunds to DOE. Head is the president of LWU.

In recent years, LWU had been audited by DOE and had been warned about the necessity of keeping proper records in regard to financial aid eligibility and the payment of refunds back to DOE. In response to this agency warning, Head developed a compliance program which established specific guidelines within LWU for applying DOE’s policies and procedures regarding PELL Grant funds.

One day, without prior warning, FBI agents showed up at the LWU corporate office with a search warrant authorizing the seizure of all financial records pertaining to LWU’s participation in the PELL Grant program, including records reflecting student enrollments, determinations of financial aid eligibility, no-show students and refund payments back to DOE. The three page affidavit in support of the search warrant said nothing about LWU’s compliance program.

Head immediately called Amanda, a white collar defense lawyer who had been instrumental in developing the company’s compliance program.

- A. What advice should Amanda provide to Head regarding the conduct of the search? Your answer should address, but not be limited to, advice on such matters as:**
- **what a typical search warrant at a corporate office allows the government to search for;**
 - **the manner in which the search is typically conducted;**
 - **the instructions that defense counsel should give corporate employees regarding the search.**
- B. Assuming the FBI seizes documents necessary for LWU’s continued operation, what remedies are available to LWU?**
- C. If Head is later prosecuted for his activities at LWU, what grounds exist to challenge the admissibility of the documents? What arguments can be made in support of these grounds?**

Sample Question #2 – Federal Law

Debra, a single mom, aged 43, has been dating Bill since 1995. Bill is a con artist, who has been bilking people out of money for years, fraudulently posing as a lender of venture capital funds. Bill advertised that, for a fee of \$50,000, he would obtain loans for up to \$1,000,000. Debra is a lawful permanent resident of the United States, having immigrated to the U.S. from Australia in 1994. She works a few hours when she can and is a recipient of Supplemental Security Income (SSI) and food stamps. She has two children, both under the age of five. One of her children is severely disabled and requires her continual presence throughout the night in order to be able to sleep.

While Debra and Bill dated, she was aware of his occupation but had never done any work for him. All that changed on May 4, 2001. Bill asked Debra if she would come answer telephones for him at his office for two weeks. He told her to urge people to send money to get loans. He also told Debra that he had not funded any loans, that he had spent all the fee money to gamble.

Debra worked for Bill for two weeks. Knowing that Bill was not funding loans, she nonetheless encouraged people to send in money. During the time she worked for Bill, Bill’s company obtained \$250,000 in fees, all from out of state. Shortly after Debra finished working for Bill, a federal grand jury returned an Indictment against Bill, charging him with a scheme to defraud that netted more than \$10,000,000 and had victims nationwide. Included in the fraud charges were the fees that had arrived while Debra worked for Bill and had made false assertions. The U.S. Attorney’s office has sent Debra a target letter, advising her that a Superseding Indictment is about to be sought adding Debra to the charges. Debra has contacted you and told you that she wishes to settle the case with a written plea agreement and disposition hearing.

- A. As Debra’s attorney, what concessions would you seek from the Government as part of a plea agreement? Would you agree to the Superseding Indictment? Why or why not?**

- B. What concessions would you expect the Government to seek as part of the plea agreement?**
- C. Prior to the disposition hearing, what will you tell Debra the judge could ask her about during the plea colloquy?**

Sample Question #3 – Federal Law

Sylvester is one of several defendants indicted in federal district court under 21 U.S.C. 960 for conspiracy to smuggle heroin into the United States. The indictment alleges that Sylvester recruited women in California to travel alone on individual trips to Bangkok, Thailand, to meet a contact. The contact gave each woman a suitcase, which the women would transport as luggage on a flight back to the U.S. The indictment further alleges that two of the women were arrested in the course of their trips. One of them, Gilda, was arrested at the Bangkok airport as she was boarding a flight to Los Angeles; she was prosecuted and given a life sentence. The other, Hillary, was arrested by Customs upon arriving at the Los Angeles airport; she has since pleaded guilty. Both women have agreed to cooperate against Sylvester and will testify as government witnesses at his trial.

The indictment identified Gilda and Hillary by name and identified them as unindicted co-conspirators who received instructions from Sylvester and made the trips to Southeast Asia to further the drug smuggling conspiracy. Sylvester, who has sustained several felony drug convictions in the past, retains Quentin.

- A. What basic discovery should Quentin request by letter from the Assistant U.S. Attorney and on what authority or rules should the request be based?**

Quentin has his investigator make contact with the Bangkok police, who tell the investigator that Gilda was interviewed on the day of her arrest and signed a detailed statement. In that statement, Gilda said that Sylvester recruited her to go to Thailand to bring back diamonds that she would be smuggling into the U.S. and that she had no idea that she would be transporting drugs. Quentin requested a copy of the statement, but the Bangkok police refused, stating that Quentin would have to obtain the statement and any other police records pertaining to Gilda's arrest and prosecution from the U.S. Attorney's Office.

Quentin contacted Assistant U.S. Attorney Frank and requested a copy of the entire Bangkok police file on Gilda. Frank advised Quentin that the U.S. Attorney's Office had received the police and prosecution files from Thailand and did not find that the files contained anything that the government would be using in its case-in-chief or any information otherwise discoverable by the defense. On this basis, Frank declined Quentin's request for access to inspect and copy the files.

- B. What procedural options are available to Quentin through the District Court to obtain access to the police and prosecution files and, in particular, Gilda's signed statement? What legal theories justify granting the defense request for access?**

During trial preparation, Frank learns from the case agent that, several years prior, Hillary had been a confidential informant for a federal law enforcement agency that is not connected to this case. Hillary's status as an informant was terminated by that agency after the agency concluded that she had provided agents with false information on several occasions.

- C. What obligation, if any, does the government have to disclose to Quentin the information regarding Hillary's prior work as a confidential informant and the termination of that work by the federal agency?**

Sample Question #4 – Federal Law

Your client, Defendant, is charged with bank robbery in federal court. From the discovery materials, you learn the following.

At the date and time of the robbery, an individual entered a federally insured bank, approached Teller and said, "Your money or your life." Teller gave the individual money from her cash drawer and the individual ran out of the bank.

Teller gave the police the following general description of the robber: a Caucasian man, in his mid thirties, between five foot, eight inches and five foot, ten inches tall, wearing blue jeans and a white, short sleeve shirt. Manager, who claimed to witness the robbery, confirmed this description. About 10 minutes after the robbery, Police Officer, who was in his patrol car about one mile from the bank, received the report of the robbery and the description of the robber over his police radio. Just after Police Officer received this information, he saw Defendant, who matched the general description of the robber, running down the sidewalk away from the direction of the bank. Thinking that this man may be the robber, Police Officer pulled over and ordered Defendant to stop. Defendant stopped and, after frisking Defendant and finding no weapons, Police Officer radioed Sergeant and told him what happened. Sergeant instructed Police Officer to hold Defendant until Sergeant could bring bank witnesses to the scene to make an identification.

About forty-five minutes later, Sergeant arrived at the scene with Teller and Manager in his police car. Teller, prior to receiving the field identification admonition, immediately identified Defendant as the man who robbed her. After hearing Teller's identification, Manager hesitated, but also identified Defendant as the robber.

- A. What identification evidence should the government attempt to introduce at trial?**
- B. What arguments can you make in seeking to suppress this evidence?**
- C. What arguments can the government make in response to your suppression arguments?**
- D. What rulings is the district court likely to make on your suppression arguments and why?**

Sample Question #5 – Federal Law

Defendant Bob is charged with co-defendant Abel in an indictment alleging they were part of a conspiracy to distribute narcotics. The specific narcotics charged are methamphetamine and cocaine base.

The prosecutor has tape-recordings of Abel reaching agreement to sell Rat 100 grams of methamphetamine at 10% purity and 50 grams of cocaine base. Abel recruited Bob to deliver 50 grams of cocaine base to Rat. As he was delivering the cocaine base to Rat, Bob was arrested by DEA agents. Bob confessed completely and told the agents where Abel was located. Bob made his statements without signing any cooperation agreement with the prosecutor. Based on this information, the agents arrested Abel.

Bob, who is 23 years old, has one prior conviction involving petty theft where he was sentenced to probation. He successfully completed probation before being arrested for the delivery of cocaine base. Bob used and became addicted to cocaine base given to him by Abel, but Bob has never previously been involved in distributing narcotics. Bob agreed to deliver the drugs for Abel because they used to be part of the same gang. The gang members were required to help each other or suffer retribution. While Bob knew that Abel was involved in criminal activity, Bob did not know that Abel was involved in selling drugs until Abel asked him to deliver drugs to Rat. Further, Bob did not know the nature or the amount of drugs.

Bob grew up in a broken home. His father sexually abused him repeatedly when he was seven years old and left him when he was eight years old. His mother was busy working so he never received any parental guidance. He joined a gang for a year but dropped out. At the time of the arrest, Bob lived at home where he was the sole provider for his disabled grandmother and three children.

Without a plea agreement, Bob pled guilty to the charge of being part of a conspiracy to distribute narcotics. The factual basis of the plea includes Bob's knowledge that he was delivering narcotics given to him by Abel. The factual basis does not contain any facts pertaining to Bob's knowledge that he was delivering cocaine base or to his knowledge as to the amount of drugs. The factual basis does not contain any facts that Bob knew that Abel was negotiating other drug deals.

You are Bob's attorney. Please prepare a sentencing memo to be filed with the court with your recommendation as to the appropriate sentence. In your memorandum, please address the following:

- A. Discuss the mandatory maximum sentence. Explain your analysis.**
- B. Discuss any mandatory minimum sentence that may apply. Explain your analysis.**

C. Explain how you calculated the appropriate guideline range.

D. Discuss any downward adjustments and/or departures that may apply.

Sample Question #6 – Federal Law

Albert has been homeless for a number of years and lives in shelters or on the streets. His sister, Suzy, owner of a bed and breakfast, lives in Hawaii. Every once in awhile he has done some shoplifting and is on probation until August 1, 2001. He believes that voices are telling him to do bad things. One day, a real voice, belonging to Harry, spoke to him at the shelter. Harry told Albert that, if Albert drove a car into the United States from Mexico, he would pay Albert \$500. This was more money than Albert had seen in his entire life, so he jumped at the opportunity.

On June 1, 2001, Albert took the trolley down to the U.S. Mexican border. He met Harry at a parking lot just south of the Port of Entry. Harry handed him the keys to a battered van that was parked in the lot. Harry told Albert to drive very carefully because there was “precious cargo” in the van. Albert also heard the voices in his head telling him to drive the van into the U.S. Harry told Albert that he, Harry, would be following Albert in another car and not to worry.

As Albert approached the Port of Entry, a customs inspector asked him if he had anything to declare. He advised that he did not. He displayed no nervousness, and a roving narcotics detector dog walked past the van without alerting. Still, the customs inspector thought Albert “looked funny” and referred him to secondary inspection. At secondary, an inspector observed one screw to be a little shinier than the rest near the gas tank. The inspectors punched a 6-inch hole in the trunk and saw nothing. The gas tank was removed and inspected. Inside the gas tank were packages containing more than 20 kilograms of cocaine. Albert was placed into custody.

After more than 20 hours in custody, Albert was advised of his rights and agreed to speak with investigating agents. He told them about Harry, but also mentioned the voices in his head telling him to do bad things.

Albert was charged by a complaint in federal court with Importation of Controlled Substance in violation of Title 21, United States Code, Sections 952 and 960. At his initial appearance, you were appointed as his counsel. The Government moved to detain Albert pending trial.

- A. What are the ways in which the Government may obtain a probable cause determination in order to proceed with the case? What is the most common way for the Government to obtain a probable cause determination?**
- B. What are the bases the Government may use to seek detention of Albert? Describe the burden of proof the Government must sustain as to each basis for detention, and list the evidence the Government would adduce under each basis.**
- C. As Albert’s defense attorney, what, if any, bail recommendations would you make? List the facts you would use to support your recommendation.**
- D. As Albert’s case progresses through the system, what, if any, motions would you make on his behalf? Briefly list the facts you would use to support your motions.**

If Albert is released from custody, he wants to move to Arizona and start life anew. Can Albert resolve his case living somewhere other than where the crime was committed? If so, how?